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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Developing a Unified Inter-carrier
Compensation Regime

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CC Docket No. 01-92

COMMENTS OF CBeyond COMMUNICATIONS, L.L.C.

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Cbeyond Communications, LLC (“Cbeyond”), through its attorneys, submits these comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.¹ Cbeyond is a facilities-based broadband service provider offering voice and Internet-based applications to small business customers over an integrated packet switched network. Cbeyond provides an integrated package of high quality local and long distance voice communications, dedicated broadband Internet access, and enhanced Internet-based applications to small businesses that require between 5 and 25 lines of local service.²

I. INTRODUCTION AND SUMMARY

Cbeyond applauds the Commission’s goal of establishing a unified system of intercarrier compensation. Cbeyond agrees that only when all carriers and all different types of telecommunications services are governed by the same intercarrier compensation rules will competition ever truly take hold on the stable foundation laid by the Telecommunications Act of

¹ See *In matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (rel. Apr. 27, 2001) (“NPRM”).

² Cbeyond is regulated as a competitive local exchange carrier (“CLEC”).

1996.³ As aptly noted by the Commission, the goal of this NPRM is to “encourage efficient use of, and investment in, telecommunications networks, and the efficient development of competition,” in light of “increasing competition and new technologies.”⁴ Unfortunately, the Commission’s NPRM, while purporting to take a universal view of inefficiencies in intercarrier compensation generally, limits its examination of intercarrier compensation to those rules governing traditional, measured use, circuit-switched networks. In these comments, Cbeyond submits that the Commission, in order to realize its stated goal, should expand this rulemaking to examine intercarrier compensation regimes that govern *all* forms of interconnection, including reciprocal compensation and access charges, and must ultimately address these issues in a technology neutral manner. The Commission’s examination must account for the emergence and continuing evolution of the network to a packet-based network, while also accommodating circuit-switched networks.

To this end, Cbeyond respectfully submits that the only mechanism to accommodate the convergence occurring in the network is through the adoption of a competitively and technologically neutral bill-and-keep regime carefully crafted to provide the correct market incentives. An added benefit of a properly structured bill-and-keep regime would be to also simplify the physical interconnection arrangements as well as to ease the administration of interconnecting separate networks. Such a regime would incent carriers to build and maintain efficient networks, while removing perverse market distortions that require regulatory intervention rather than resolution through market forces.

³ Telecommunications Act of 1996, Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 56, codified at 47 U.S.C. 151 et seq. The 1996 Act amended the Communications Act of 1934, hereinafter “the Act” or “Communications Act.”

³ NPRM, ¶ 2.

11. **IN LIGHT OF THE EVOLUTION OF THE PUBLIC SWITCHED TELEPHONE NETWORK TO A LARGELY PACKETIZED ENVIRONMENT, THE COMMISSION SHOULD ADDRESS ALL FORMS OF REGULATORY ARBITRAGE, NOT JUST THOSE ASSOCIATED WITH TRADITIONAL CIRCUIT SWITCHED NETWORKS**

The Commission appears to view the initiation of this proceeding as a beginning point in the process of crafting a long-term solution to correct problems associated with the current intercarrier compensation regime. In fact, the Commission indicated that “in this NPRM we envision that a bill-and-keep regime would fulfill the goals of the two interim measures,” adopted in the *ISP Reciprocal Compensation Order*⁵ and *CLEC Access Charge Order*,⁶ once those initiatives are fully phased in over the next three years.’ The Commission, at the same time, purports to be interested in whether, with “the introduction of local competition and new technologies (including packet-switched networks that are used for both voice and data), it has become essential to adopt a single, unified approach to intercarrier compensation.”⁸ However, at the outset, and despite the Commission’s statements that this NPRM is a first step in creating a “unified regime” of intercarrier compensation, the NPRM seeks comment only on the feasibility of a bill-and-keep regime for two different bill-and-keep approaches to intercarrier compensation—the Central Office Bill and Keep (“COBAK”) proposal and the Bill Access to Subscribers—Interconnection Cost Split (“BASICS”) proposal—both of which apply *only* to measured traffic carried on the *local-circuit switched network*.⁹

⁵ In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, *Order on Remand and Report and Order*, FCC 01-131 (rel. Apr. 27, 2001) (“*ISP Reciprocal Compensation Order*”).

⁶ In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, *Seventh Report and Order*, FCC 01-146 (rel. Apr. 27, 2001) (“*CLEC Access Charge Order*”).

⁷ NPRM, ¶ 3.

⁸ NPRM, ¶ 36.

⁹ NPRM, ¶ 23.

Cbeyond submits that the Commission, by limiting the NPRM to consideration of intercarrier compensation arrangements involving only measured traffic on traditional circuit switched networks, cannot hope to achieve its goal of creating a unified intercarrier compensation regime in the long-term. The Commission's rationale for not addressing networks other than traditional circuit switched networks is that other interconnection arrangements, such as those involving internet protocol ("IP") based connections, are not currently subject to rate regulation and do not exhibit symptoms of market failure.¹⁰ The Commission does not consider, however, that many packet-based carriers currently interconnect with ILECs by purchasing dedicated circuits from the ILECs. Given this, competitive telecommunications carriers that deploy packet-based networks to provide an integrated voice and data service offering must be able to interconnect with ILECs on a technically and economically efficient basis, consistent with Sections 251 and 252 of the Act." Therefore, it is imperative that the *real* scope of the Commission's NPRM be expanded to recognize the new packet-switched network architectures, such as the one being deployed by Cbeyond.

Indeed, the Commission has recognized on numerous occasions, most recently in its *Collocation Remand Order*, that the PSTN is rapidly evolving from a circuit switched network which measures minutes of use, to a packet-based network.¹² The Commission aptly observed that :

Significantly, [since 1996], the rapid pace of development and investment in innovative technologies has ushered in a fundamental change in the potential services and capabilities available to end users. In particular, the increased use of packet-based technologies has begun to revolutionize the delivery of

¹⁰ NPRM, ¶ 2.

¹¹ Cbeyond is not suggesting that companies operating as ISPs be subject to regulation.

¹² *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, *Fourth Report and Order*, FCC 01-204 (rel. Aug. 8, 2001), ¶ 5 (hereinafter "*Collocation Remand Order*").

telecommunications services. In part as a result of opportunities created by the 1996 Act, a burgeoning of new technologies has enabled network builders to begin turning away from the traditional circuit switched network and its reliance on single-function equipment and rigid routing hierarchies. These new networks employ “cutting edge” developments in computing, packet technology, digitization, and optical transmission to offer customers both traditional voice services and an ever-increasing array of advanced services. The result has been the deployment of technologies that can perform more functions, at greater efficiency and higher speeds, than prior technologies.

The Commission’s *Collocation Remand Order* acknowledged at the outset that “changes in technology have not only resulted in the deployment of new equipment that was barely, if at all, used in the public switched telecommunications network five years ago when the 1996 Act was passed, but also have enabled dramatically different network architectures and designs.”¹³ The Commission concluded that new and expanded collocation rules were needed to accommodate newly available equipment and the attendant network architectures. The Commission observed that today’s networks “are increasingly becoming more diverse than those available in yesterday’s unitary, circuit-switched network environment” and are being deployed by providers that have succeeded in differentiating themselves.¹⁴ Indeed, in 1999 the Commission stated in no uncertain terms that the interconnection obligations in Section 251(c)(2) apply to both packet-switched services and circuit-switched services.¹⁵ In light of these statements, which clearly demonstrate the Commission’s grasp of the new technologies, Cbeyond is concerned that the scope of the NPRM is inadequate to address the forms of interconnectivity that will dominate the PSTN in the near future.

¹³ *Collocation Remand Order*, ¶ 6.

¹⁴ *Id.*

¹⁵ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, *Order on Remand*, FCC 99-413 (rel. Dec. 23, 1999), ¶ 2.

In fact, “next generation” CLECs such as Cbeyond are rapidly deploying state-of-the-art packet-based networks today, and carriers with circuit-switched networks are beginning to migrate their switching and transport functions to packet technology. Today, the typical connection between data-centric carriers is a high capacity (1.544 Mbps and higher) dedicated circuit; in the near future, the predominant mode of interconnection among all carriers will be such high capacity dedicated circuits. Cbeyond is also pioneering the provision of multiple service offerings offered as bundled packages over one facility, priced at flat monthly rates, and employs a network architecture that Cbeyond believes will be adopted by the rest of the telecommunications industry over time. It is also Cbeyond’s belief that packet based architectures, such as Cbeyond’s, will become the standard architecture in the not too distant future. As high capacity dedicated circuits become the norm, measuring traffic on a per-minute basis will be increasingly outmoded and unnecessary, as voice and data traffic will be indistinguishable. Accordingly, maintaining compensation structures that require measurement and compensation on a per-minute basis will impose unnecessary operational constraints and costs on carriers and equipment manufacturers.

Therefore, Cbeyond submits that to the extent the Commission is truly interested in arriving at a “unified” intercarrier compensation regime at the end of this proceeding, or at the end of the three year “interim” period contemplated by the *CLEC Access Charge Order* and the *ISP Reciprocal Compensation Order*, the Commission must expand the scope of this NPRM beyond mere consideration of intercarrier compensation mechanisms in the circuit switched world. As the Commission has also often observed, “in adopting the 1996 Act, Congress consciously did not try to pick winners or losers, or favor one technology over another.”¹⁶

¹⁶ See e.g., *Collocation Remand Order*, ¶ 7.

III. THE COMMISSION SHOULD ESTABLISH A BILL-AND-KEEP REGIME FOR ALL TYPES OF TRAFFIC, NOT JUST MEASURED CIRCUIT-SWITCHED TRAFFIC

One of the Commission's stated goals in this proceeding is to eliminate "regulatory arbitrage opportunities" that arise from the existing "calling party pays" regime. The Commission observes that the existing intercarrier compensation rules create opportunities for regulatory arbitrage because of: (1) the existing patchwork of intercarrier Compensation rules; and (2) the fact that different types of service providers "pay different rates for essentially the same types of calls."¹⁷ Cbeyond agrees that elimination of such arbitrage is a laudable goal. Moreover, the adoption of a bill-and-keep regime is acceptable to Cbeyond, so long as the Commission applies the bill-and-keep regime to *all types of traffic and requires that it govern all kinds of interconnection between local carriers*.

As discussed above, however, the Commission is essentially carving out of this proceeding any real consideration of a truly unified intercarrier compensation regime by refusing to give serious consideration of application of a bill-and-keep regime to *all* types of traffic. Cbeyond submits that a truly unified bill-and-keep regime can be a valid means of promoting efficient and effective intercarrier interconnection and compensation only to the extent that the Commission applies bill-and-keep to *all* types of interconnection arrangements between *all* types of carriers interconnecting with the local telephone network, including dedicated, high-capacity forms of interconnection, and to all types of traffic passing over the local telephone network. The Commission will not achieve its goals of eliminating arbitrage and developing a "unified" system of intercarrier compensation unless a technology neutral focus is employed.

¹⁷ NPRM, ¶¶ 11, 12.

Cbeyond submits that the Commission has the authority to modify its existing interstate access rules to move them to bill-and-keep for all carriers, and bill-and-keep should govern all forms of interconnection between CLECs and ILECs.¹⁸

IV. ILEC EFFORTS TO REQUIRE CLECS TO ESTABLISH MULTIPLE POINTS OF INTERCONNECTION ARE INCONSISTENT WITH BOTH THE “COBAK” AND “BASICS” PROPOSALS AND SHOULD BE REJECTED BY THE COMMISSION

In the NPRM, the Commission seeks comment on the single point of interconnection (“POI”) proposals now being championed by several ILECs. Specifically, the Commission seeks comment on whether CLECs should continue to be allowed to: (1) interconnect at a POI within a single LATA, and (2) whether CLECs may define their own local calling areas differently than the ILEC’s local calling area, or whether CLECs should be required to mirror the ILEC’s local calling area and pay the ILEC transport and/or access charges if they do not.”

Cbeyond submits that several ILECs, Verizon and BellSouth in particular, have attempted to force CLECs to establish POIs at multiple points on the ILEC network, and give the ILECs the exclusive rights to define where these POIs must be. For instance, both Verizon and BellSouth attempt to force CLECs to establish POIs in every access tandem (and often in local tandems as well) or pay substantial charges to the ILEC for transport of traffic across their LATAs. Verizon’s POI proposal (which it refers to as Geographically Relevant Interconnection Points or “GRIPS”) requires all carriers to exchange local traffic with one another at a point of Verizon’s choosing, and that Verizon purports is close in geographic proximity to the rate center

¹⁸ To the extent that the Commission adopts a bill-and-keep regime for all types of traffic and interconnection, Cbeyond submits that it would not oppose a transition period for those carriers currently operating under a usage based structure to implement bill-and-keep.

¹⁹ NPRM, ¶ 72.

or NXX of the terminating end users.²⁰ Under the Verizon and BellSouth POI schemes, CLECs would unfairly be held responsible for paying the cost of transporting their customer's local calls to and from points mandated by the ILECs.

In any event, the Verizon and BellSouth POI initiatives share common flaws. First, they seek to compensate the ILEC for transporting CLEC traffic across their local networks, but ignore the fact that the CLECs also transport ILEC traffic across their networks. Second, the ILEC POI proposals assume that the configuration of the ILEC network is optimally efficient, and presume to dictate to CLECs how and where they must interconnect. But as Cbeyond indicated above, and the Commission has often recognized, new technologies, such as those being deployed by Cbeyond, are allowing telecommunications providers to deploy new network architectures that are not constrained by the same limitations facing the outmoded legacy circuit-switched networks to which the ILECs are wedded. Accordingly, Cbeyond submits that in adopting a properly structured bill-and-keep regime, the Commission should maintain its existing rules allowing CLECs to interconnect at a single POI in each LATA," and clarify that ILECs may not force CLECs to mirror ILEC local calling areas, or pay transport and/or access charges if they do not.

ILECs' attempts to force POI proposals on CLECs have so far been defeated by a number of state regulators, including those in New York²² and Massachusetts.²³ However, the

²⁰ BellSouth has a similar interconnection requirement it terms Multiple Tandem Access or "MTA."

²¹ 47 C.F.R. § 51.321.

²² Case 99-C-0529, Opinion 99-10, Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, *Opinion and Order Concerning Reciprocal Compensation* (Aug. 26, 1999) at 63.

²³ *Investigation By The Department On Its Own Motion As To The Propriety Of The Rates And Charges Set Forth In The Following Tariffs: M.D.T.E. Nos. 14 And 17, Filed With The Department On August 27, 1999, To Become Effective On September 27, 1999, by*

Commission should take action to prevent ILECs from forcing CLECs to re-litigate these issues endlessly in interconnection arbitrations. As the state commissions have recognized, compelling CLECs to interconnect at multiple POIs of the ILEC's choosing compels creation of **an** inefficient network design and fails to recognize the fact that CLECs haul traffic across CLEC networks as well.

Cbeyond asks that the Commission use this *NPRM* to confirm that establishment by a CLEC of a single POI on the ILEC network in each LATA is all that is necessary to ensure transport and termination of CLEC traffic throughout the LATA. As the Massachusetts Commission. recognized, such **an** approach is inherently fair to **all** parties. It recognizes the fact that CLECs transport ILEC traffic across their entire local networks, just as ILECs transport CLEC traffic, and such a decision would be consistent with the Commission's findings in the *Local Competition First Report and Order*, where the Commission concluded that Section 251(c)(2) means what it says, and requires ILECs to allow CLECs to interconnect at "any technically feasible point" on the network.²⁴ The Commission's rules are clear in stating that the CLEC, not the ILEC, has the prerogative to select the technically feasible interconnection point on the ILEC network. The Commission should clarify that ILECs, through their various POI proposals, may not require CLECs to establish additional physical interconnection points beyond those chosen by the CLEC, and further, may not shift its transport costs to the CLEC.

New England Telephone Telegraph Company d/b/a Bell Atlantic-Massachusetts, D.T.E. 98-57 (Mar. 24, 2000). In rejecting Verizon's POI proposal, the M.D.T.E. reasoned that GRIPs "is inconsistent with the [FCC's] policy regarding transport cost recovery," because "[i]t is clear that these transport costs have arisen solely from competition in the local exchange market," and implementation of the GRIP proposal "could potentially give Bell Atlantic a competitive advantage over the CLECs by assigning all additional transport costs to the CLECs. Such a result is inconsistent with the intent of the Act and the FCC's stance on competitively neutral cost recovery. It could also inhibit the development of competition in Massachusetts."

²⁴ See *Local Competition Order*, 11 FCC Rcd 15499, (1996), ¶ 209.

Besides clarifying that ILECs may not unilaterally impose POI arrangements upon CLECs, the Commission should take this opportunity to clarify that ILECs are obligated to establish meet-point arrangements — rather than mandating POIs in their central offices — upon a CLEC's request. Mandating that meet point arrangements be made available makes sense for several reasons. First, in a multi-carrier environment where carriers have the obligation of carrying their customers' calls to the terminating carrier's network, meet-point arrangements are, in many cases, the most efficient interconnection arrangement. Meet-point arrangements save time, and are cost-efficient because such arrangements obviate the need for CLECs to collocate. Requiring ILECs to offer meet-point arrangements is fully consistent with longstanding industry practice: meet-point arrangements are the predominant means by which ILECs interconnect with CMRS carriers and neighboring ILECs. Accordingly, the Commission should establish rules that require ILECs to offer meet-point interconnection arrangements at network points mutually agreed upon by the parties, and furthermore, should adopt rules that do not permit ILECs to unreasonably withhold consent to establish interconnection at a requested meet-point.²⁵

Finally, the Commission should mandate that meet-point arrangements be provided at TELRIC-pricing, including that portion of the meet-point arrangement that consists of the high-capacity transport link between the CLEC's and the ILEC's network. In meet-point arrangements, one carrier — typically the ILEC — provides the dedicated circuit connecting both carrier's points of presence, and the two carriers split the cost. Because this transport is generally provided over standard dedicated special access or private line facilities (such as DS1 or DS3), the TELRIC-based rates for this form of interoffice transport should apply, with each party sharing the cost of the line according to the percent of traffic that it carries over it. The

²⁵ The Commission's rules governing meet-point interconnection should specifically state that disputes regarding meet-point interconnection will be resolved by the Commission on an expedited basis.

Commission should conclude that because meet-point interconnection is mandated pursuant to Sections 251 and 252 of the Act, it must be priced according to TELRIC principles. Mandating the provision of meet-point interconnection while at the same time specifically rejecting the ILECs' anti-competitive POI initiatives will allow companies such as Cbeyond to continue deploying technologies that are capable of performing innovative functions at greater efficiencies and at higher speeds than are available over circuit-switched networks.

V. THE COMMISSION SHOULD MAKE CLEAR THAT CLECS HAVE THE RIGHT TO DEFINE THEIR OWN LOCAL CALLING AREAS

In the NPRM the Commission seeks general comment on the use of virtual central office codes (NXXs).²⁶ Specifically, the Commission seeks comment on the following issues: (1) the circumstances under which CLECs should be entitled to use virtual NXX codes; (2) the transport obligations of the originating LECs when the terminating carrier is using virtual NXX codes.²⁷ Cbeyond submits that first **and** foremost the Commission's consideration of the issue of the use of virtual NXXs must be informed by one basic principle: CLECs must be free to define their local calling areas any way they choose, and to compete against ILEC Foreign Exchange ("FX") service offerings.

In seeking comment on issues related to both virtual NXXs and POI issues, the Commission, implicitly and, sometimes explicitly, assumes that CLECs must define their local calling service areas in a manner that mirrors, or at least approximates, the ILECs. For instance, the Commission suggests that NPA-NXXs assigned out of an ILEC local calling area can be confiscated from a CLEC.²⁸ Cbeyond submits that restriction of the use of virtual NXXs, by

²⁶ Virtual NXX codes are central office codes that correspond with a particular geographic area that are assigned to a customer located in a different geographic area.

²⁷ NPRM, ¶ 115.

²⁸ See NPRM, ¶ 115, citing *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 7574, 7678-7682 (2000).

either states, or the North American Numbering Plan Administrator (“NANPA”) acting on delegated authority from the Commission, is fundamentally wrong as a matter of law and as a matter of public policy.

Virtual NXXs are used to provide telecommunications services to many CLEC customers. The service innovations CLECs provide to customers includes, for instance, expanded local calling areas, and lower cost of service to end users. Further, traffic routed to numbers from virtual NXXs is identical to all other traffic that is subject to the obligations of Section 251. CLECs should not be hamstrung in their ability to compete with incumbents. ILECs currently assign out-of-area numbers routinely in their FX services, and any restrictions placed on the use of virtual NXXs by CLECs would unfairly prevent CLECs from competing with this ILEC service.

Cbeyond submits that the Commission should not address number confiscation or the effects that virtual NXXs may have on numbering utilization in this proceeding. Rather, the Commission should continue to address national numbering policy in the dockets already open for that purpose, and should continue to allow NANPA, and the other bodies considering those issues, to address them. The Commission should, however, find that CLECs cannot be forced to mirror the ILEC local calling areas, and are free to define local traffic any way they see fit, and should expressly find that CLECs can assign “local” numbers out of the ILEC-defined local calling area if the ILEC provides FX service outside of that area.

VI. CONCLUSION

As set forth in these Comments, Cbeyond respectfully requests that the Commission expand this rulemaking to examine intercarrier compensation regimes that govern all forms of interconnection and to accommodate the evolution of technological developments occurring in the network. In doing this, Cbeyond respectfully submits that the Commission’s

review of intercarrier compensation regimes must be expanded to include packet-based traffic. Furthermore, the rules adopted should have the goal of providing simplicity in the physical interconnection arrangement, promote ease of administration and create the proper incentives to build and maintain efficient networks, while removing perverse market distortions.

Respectfully submitted,

A handwritten signature in black ink, reading "Ross A. Buntrock". The signature is fluid and cursive, with the first name "Ross" being more prominent.

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AUGUST 21, 2001

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CC Docket 01-92

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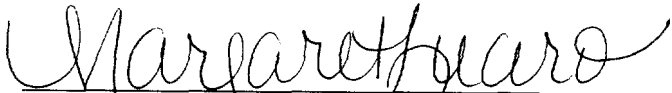
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